1014 of Regulations 74 (1928 Act) and the corresponding article appearing in all prior and subsequent regulations, and which regulation the Circuit Court of Appeals for the Third Circuit has now held invalid with respect to one deduction and approved with respect to the other deduction.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1941

NO.

KEYSTONE AUTOMOBILE CLUB CASUALTY CO.,
Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review,

KEYSTONE AUTOMOBILE CLUB FIRE CO.,
Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

Brief supporting petition for certiorari

The Petition contains a reference to the Opinions promulgated below and also references to the official reports

in each instance, a statement of the grounds on which the jurisdiction of this Court is evoked, a statement of the case, and a summary of the reasons relied on for the allowance of the writ.

ARGUMENT

Preliminary Statement

Section 208 (c) (3) of the Revenue Act of 1928, and corresponding sections of prior and subsequent revenue acts, granted special deductions to "Mutual Insurance Companies Other than Life or Marine". Those special deductions were (1) the amount of premium deposits returned to their policyholders, and (2) the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves.

Article 1014 of Regulations 74, promulgated under the Revenue Act of 1928, and all corresponding articles of all regulations promulgated under prior and subsequent revenue acts from 1918 to 1941, inclusive, provided that a stock fire insurance company operated on the mutual plan to the extent of paying dividends to certain classes of policyholders could make their returns on the same basis as mutual fire insurance companies with respect to their business conducted on the mutual plan.

Under this regulation, the Commissioner of Internal Revenue has always accorded both stock casualty and stock fire insurance companies operated upon the mutual plan the same treatment since the 1918 Act to date. The Circuit Court of Appeals in its Opinion held that this was correct and that the regulation could make no distinction between fire insurance companies and casualty companies (R. 311).

The Board allowed the deduction for "premium deposits

returned'' to policyholders, and the Circuit Court of Appeals approved that allowance (R. 304-312).

The Circuit Court of Appeals however, held that the regulation was ineffective as to the allowance of the deduction for ''premium deposits retained'' to pay losses and expenses because it extended the right to these deductions to participating stock companies operated upon the mutual plan, which was, of course, exactly what the regulation in question had provided for twenty (20) years (R. 311).

Summary of Argument

The Circuit Court of Appeals failed to give force and effect to the fact that that part of Article 1014, which is here pertinent, had stood in the regulations unchallenged for over twenty (20) years, and was repeatedly approved by Congressional reenactment of the underlying Statute in the face of the Department's request for a change. Reenactment of the Statute under such circumstances removed whatever degree of ambiguity or doubt as to construction there might have been by declaring that ''mutual'' related to *''operation''* of the Company as distinct from *''control''* for purposes of taxation and the deductions allowed by Section 208 (c) (3). The Circuit Court of Appeals failed to give force and effect to the ''Reenactment Rule'' in holding that that part of Article 1014 of Regulations 74, pertinent to the within case, was ineffective because it extended or amended Section 208 (c) (3) and granted a deduction not provided for in the Statute. The Circuit Court of Appeals also failed to distinguish between ''mutual'' casualty and fire insurance companies for exemption purposes, as contrasted with ''mutual'' companies for taxation purposes and held that a company which could not qualify as a mutual for exemption purposes under Section 103 (11) (Revenue Act of 1928) could not qualify as a mutual for purposes of special deductions under Section 208 (c) (3) (Revenue Act of 1928).

Furthermore, if the Court recognized, as it did, the correctness of the deduction for "premium deposits returned to policyholders" under this regulation for stock companies operated on the mutual plan, the same reasoning supports the propriety of the second deduction for "premium deposits retained to pay losses and expenses".

The position taken by the Circuit Court of Appeals will result in extreme confusion and uncertainty as to the proper interpretation of Section 208 (c) (3) as it has heretofore been accepted and applied for approximately twenty (20) years, as evidenced by the Treasury's regulations in force for that period of time. An authoritative construction by this Court is most necessary.

Legislative History and Departmental Interpretation of Section 208 (c) (3), Revenue Acts of 1928 and 1932 and Section 207 (c) (3), Revenue Act of 1934

Section 208 (c) (3) and Section 207 (c) (3) grant the deduction in question to Mutual Insurance Companies Other than Life or Marine. Article 1014 does not grant any additional deductions. The pertinent part of Article 1014 which is involved in this case specifies only one type of mutual insurance company which is entitled to the deduction in question, viz., a stock company operated on the mutual plan to the extent of paying dividends to certain classes of policyholders. However, Article 1014, as a whole, specifies several types of taxable "mutuals" which are entitled to the special deductions allowed by Section 208 (c) (3).

If the term "mutual", as applied to insurance companies for Federal tax purposes, had not been of doubtful construction, then Article 1014 as a whole would never have been necessary and the Treasury Department would have had no need to promulgate it. Likewise, the Federal courts would not have been called upon over the past twenty (20) years to interpret the term "mutual" with respect

to insurance companies in connection with the various types not specified in the Department's interpretation as set forth in Article 1014.[1]
Congress thought Article 1014 was a proper interpretation of Section 208 (c) (3), and by operation of the "Reenactment Rule" approved that interpretation.

The Treasury Department promulgated this regulation containing this particular interpretation under the 1918 Act and the same wording has been contained in subsequent regulations from that time until the present date.

When the 1932 Revenue Act was pending before Congress the Treasury Department attempted to procure a radical change in Section 208 (c) (3) and to, likewise, change the interpretation of it as set forth in Article 1014. Congress refused to make the requested change and reenacted Section 208 (c) (3) in the exact words theretofore used in prior revenue acts. (Report of Senate Finance Committee—May 11, 1932, C. B.-1939-1 (Part 2) p. 523 (R. 238-240); Discussion on the Floor of the Senate re Proposed Amendment-Cong. Rec. Vol. 75, Part 9, pp. 10399-10404 to 10407-May 17, 1932 (R. 240-250); Hearings before Committee on Finance-Revenue Act of 1932 on H. R. 10236-May 20, 1932, Supplement No. 3 (R. 251-303).

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[1]Penn Mutual Co. v. Lederer, 252 U. S. 523 (1920)
Duffy v. Mutual Benefit Ins. Co., 272 U. S. 613 (1927)
Atlantic Life Ins. Co., Moncure v., 35 Fed. (2) 360—D.C.E.D. Va. (1929)
Mutual Assurance Soc. of Va. v. Com., 24 BTA 1102 (acquiesced by Commissioner XI-2 CB-7) (1931)
Baltimore Equitable Assn. v. U. S., 3 Fed. Supp. 427 (Ct. Cl.) (1933)
MacLaughlin v. Phila. Contributionship, Etc., 73 Fed. (2nd) 582, (CCA-3) (1935)
National Grange Mutual Liability Co. v. Com., 80 Fed. (2) 316, (CCA-1) (1935)
Baltimore Equitable Assn. v. U. S., 17 Fed. Supp. 17 (Ct. Cl.) (1936)
Geo. A. Peak v. Comm., 80 Fed (2) 761, (CCA-8) (1936)
Equitable Life Assur. Society v. Bowers, 87 Fed. (2) 687, (CCA-2) (1937)
Driscoll v. Washington Co. Fire Ins. Co., 110 Fed. (2) 485, (CCA-3) (1940)
Ohio Farmers Indemnity Co. v. Com., 108 Fed. (2) 665, (CCA-6) (1940)
Helvering v. Oregon Mutual Life Ins. Co., 311 U. S. 267 (1940)
Pink v. AAA Highway Express, Etc., 62 Sup. Ct. Rep. 241 (1941)

It must be presumed that in so doing Congress had the construction of this section as set forth in Article 1014 in mind. The Treasury Department has never repudiated this interpretation and did not repudiate it at any time during the conduct of this case before either the Board of Tax Appeals or the Circuit Court.

Under Section 208 (c) of the Revenue Acts of 1928 and 1932, the Treasury Department had promulgated Articles 1011 to 1015, inclusive, in Regulations 74 and 77, respectively, for the purpose of interpreting that section of the said revenue acts.

When Regulations 86 (Revenue Act of 1934) were originally promulgated on February 11, 1935, it was found that the Department had completely rewritten the regulations interpreting the corresponding section of the Revenue Act of 1932. Instead of having five (5) separate articles, the Department's interpretation was condensed into one article designated as Article 207-1, Regulations 86. This regulation attempted to interpret Section 207 (c), Revenue Act of 1934, in exactly the same manner as the Treasury had suggested to Congress to change the statute itself and which change had been rejected at the time of the passage of the Revenue Act of 1932.

A tremendous opposition developed on the part of Mutual Insurance Companies Other than Life and Marine and Stock Insurance Companies Other Than Life and Marine operated on the mutual plan to this patent attempt on the part of the Treasury Department to accomplish through regulations what it had failed to accomplish when Congress refused to make the changes in the statute itself. As a result of these protests, Treasury Decision 4697, issued September 22, 1936, revoked Article 207-1 of Regulations 86, as it was originally promulgated, and restored the previous regulations interpreting this section as Articles 207-1 to 207-6, inclusive.

Article 207-5, a part of the said Treasury Decision and a part of the restored regulations, contained the identical provision with respect to the allowance as a deduction of

the amount of premium deposits retained by a stock fire insurance company operated on the mutual plan as originally set forth in Article 1014 of Regulations 74 and 77.

Analysis of Position Taken by Circuit Court of Appeals

Judge Goodrich, in referring to the exemption issue raised before the Circuit Court of Appeals but not raised in this Petition for a Writ of Certiorari, said (R. 307):

> "* * * * * * * * * * *
>
> The Court finds it unnecessary to determine whether the Petitioners have retained income for premium deposits for the purpose of paying losses or expenses because of the conclusion of the Court that the Petitioners are not mutual insurance companies."

In referring to the Petitioners' rights to the special deductions allowed Mutual Insurance Companies Other than Life under the provisions of Section 208 (c) (3) of the Revenue Acts of 1928 and 1932 and Section 207 (c) (3) of the Revenue Act of 1934, and as allowed under the interpretation of the Treasury Department expressed in Article 1014 of Regulations 74 and corresponding articles of subsequent regulations, Judge Goodrich also said (R. 311):

> "* * * * * * If the regulation purports to extend the statute by making it applicable to non-mutual insurance companies to the extent that they write participating policies the Court, likewise, thinks it is ineffective. The Act is clear that the provisions here involved are applicable only to mutual insurance companies. Regulations cannot amend the statute by granting an exemption or deduction for which the statute makes no provision.
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> * * *
>
> The Petitioners, therefore, can get no relief from

the regulations, assuming that it is subject to the construction for which they contend. * * * * * * *"

The Circuit Court of Appeals has, therefore, held that an insurance company, casualty or fire, which is not a "mutual" for *exemption purposes* is, likewise, not a "mutual" for *taxation purposes,* and in support thereof has cited the case of the *Baltimore Equitable Soc.* v. *U. S.,* 3 F. Supp. 427 (Ct. Cl. 1933) Cert. den. 290 U. S. 662 (1933) (see footnote in Circuit Court's Opinion—R. 311).

The Circuit Court of Appeals has also held that Article 1014 of Regulations 74 and the correspoonding articles of Regulations 77 and 86 are invalid only insofar as those articles allow a deduction for "premium deposits retained", under Section 208 (c) (3) of the Revenue Act of 1928 and 1932 and Section 207 (c) (3) of the Revenue Act of 1934, to stock casualty and stock fire insurance companies operated on the mutual plan to the extent of paying dividends to certain or all classes of policyholders, and has cited Mr. Justice Roberts' Opinion in the case of *Koshland* v. *Helvering,* 298 U. S. 411, in support thereof.

Analysis of the Baltimore Equitable Society Case

Baltimore Equitable Society, v. *U. S.,* 3 Fed. Supp. 427 (Ct. of Cls.) was decided May 8, 1933. That case is not an authority on the issue raised herein, and is clearly distinguishable in every respect.

That Company claimed exemption from income taxes under the provisions of Section 103 (11), Act of 1928, and corresponding sections of prior Revenue Acts.

The Baltimore Equitable Society was organized as a mutual fire insurance society under the laws of the State of Maryland, and was engaged in the business of insuring members against loss by fire. The method employed by the Society was to require a deposit by members of the full, estimated premium, against which was charged the pro-

portionate losses of the company and to which were credited the proportionate dividends and profits. The members could withdraw the remainder of their deposits upon cancellation of their policies whenever demanded. Insurance, as originally written by the Society, was for a 7-year period. Subsequently, this was changed, to perpetual insurance. In addition to this type of insurance, the taxpayer also issued "term" insurance at a fixed premium for a period less than seven years. This "term" insurance constituted about 10% of the total insurance written by the Society. It was held by the Court of Claims that such non-assessable term insurance issued for a fixed premium was not mutual insurance, and that the taxpayer was not entitled to the exemption granted mutual insurance companies. In reaching this conclusion, the Court of Claims said in part as follows:

> "As to those who received this term insurance at a fixed premium, there was no mutuality. They paid in advance for their insurance, and that was the end of all payments and liabilities so far as they were concerned. * * * They were not members, were not entitled to any refund of premiums paid upon surrender or cancellation of their policies, or to share in the distribution of earnings and profits of the company. In short, so far as those who held policies for term insurance was concerned, there was no mutuality."

The Court of Claims in the Baltimore Equitable Society case, said that exemption applied only to mutual insurance companies that were "purely mutual". In using the word "purely", there is no doubt that the Court meant "entirely", and then only with respect to the kind of insurance written. The company in question had been writing 90% mutual insurance or participating insurance and 10% non-mutual or non-participating insurance. The Court of Claims in distinguishing between exempt Building & Loan Associations and Mutual Insurance Companies, wherein part of

the Building & Loan Association's business was not conducted on a mutual basis, said:

> "But in the instant case the term insurance, while written for non-members was insurance business nevertheless, and as we construe the statute, in order to be entitled to exemption the plaintiff must show that the insurance business was conducted on a mutual basis. This was clearly not the case as to the policyholders who took out term insurance. They were not members, were not entitled to any refund of premiums paid upon the surrender or cancellation of their policies, or to share in the distribution of the earnings and profits of the company. In short, so far as those who held policies for term insurance were concerned, there was no mutuality."

The Circuit Court of Appeals for the Third Circuit, in the Philadelphia Contributionship case, decided September 27, 1934, refused to accept the language or follow the decision of the Court of Claims in the Baltimore Equitable Society case, 3 Fed. Supp. 427, decided May 8, 1933.

Yet in the Keystone case the Third Circuit quotes with approval from the same Baltimore Equitable Society case decided by the Court of Claims. That case, however, deals only with the question of "mutual" companies that meet the requirements of the exemption section of the Income Tax Laws (Section 103 (11), Revenue Act of 1928), and does not deal in any way with "mutual" companies subject to taxation and entitled to the deductions provided for under Section 208 (c) (3), Revenue Act of 1928.

However, the very part of the decision of the Court of Claims which is quoted by Judge Goodrich (see footnote in Circuit Court's Opinion, R. 311) fails completely as an authority against Petitioners' contentions.

Briefly, the Court of Claims said that the Baltimore Equitable Society could not write 90% participating or mutual insurance and 10% non-participating or term insurance, and claim exemption, for the reason that all policy-

holders were not treated alike and that insofar as those who held policies for term insurance were concerned, there was no mutuality. In the Keystone case all policyholders were treated exactly alike (R. 7) and, therefore, the Petitioners did meet fully that particular requirement which the Court of Claims stated as necessary for exemption, and which requirement formed the basis of the decision on the only issue before the Court of Claims in that case, viz., exemption.

The question which the Circuit Court of Appeals was deciding in the Keystone case with respect to the issues raised before that Court was not one of exemption of a Mutual Insurance Company but was whether the Petitioners, as stock companies operated upon the mutual plan, were entitled to the deductions allowed taxable Mutual Insurance Companies under the provisions of Section 208 (c) (3), Revenue Act of 1928, and Article 1014, Regulations 74, promulgated thereunder.

That regulation provided:

> "* * * A stock fire insurance company, operated on the mutual plan to the extent of paying dividends to certain classes of policyholders, may make a return on the same basis as a mutual fire insurance company with respect to its business conducted on the mutual plan."

The Circuit Court in the Keystone case definitely recognized the fact that an ordinary capital stock company might, in fact, be held a mutual company under Federal Tax Laws (R. 310).

Assuming that the decision of the Court of Claims in the Baltimore Equitable Society case was correct in holding that that Society was not exempt because it wrote 90% participating insurance and 10% non-participating or term insurance, such did not preclude the said Society, as a taxable Mutual Insurance Company, from filing its returns as a mutual company and claiming deductions in accordance

with the provisions of Section 208 (c) (3), Revenue Act of 1928, and Article 1014 of Regulations 74. Nothing on the record in that case shows that that Company did not do this very thing, and if it did not do so it could have done so. The Baltimore Equitable Society in filing a return as a taxable Mutual Insurance Company would have been entitled to take deductions for premium deposits "returned" and premium deposits "retained", to the extent that its business was conducted on the mutual plan.

In the Baltimore Equitable Society case, the Court of Claims disallowed that Company's claim for exemption, not because of the fact that it was not a mutual but because of the fact that the Court found that part of the insurance which was written by that Company was not written on a mutual basis. The 10% non-mutual or non-participating insurance, which was written at a fixed cash premium for a stated term, was written for policyholders who were not considered members. According to the Court of Claims they were not members for the reason that they could never obtain at the end of any policy year refunds from any unused portions of the premiums so paid, nor could they ever receive a pro rata refund from the accumulated reserves should the Company ever be liquidated. The Court of Claims said that this proved that these particular policyholders were not members for the reason that with respect to this particular term insurance which sold at a fixed premium, there was no mutuality.

However, in the case of *Pink* v. *AAA Highway Express, etc.*, 62 Sup. Ct. Rep. 241, decided by this Court on December 8, 1941, it was held that all policyholders of a mutual insurance company did not necessarily have to be members. Based on this decision by this Court it would appear to follow that if all policyholders do not have to be members in a mutual company, the fact that some of the policyholders are not members does not prevent the Company from being a mutual. This being so, it would follow that the fact that some policyholders of the Keystone Automobile Club Casualty Company and the Keystone Automobile

Club Fire Company were only associate members of the Keystone Automobile Club, and, therefore, did not share in the control of the Club and the Insurance Companies unless they choose to pay dues (R. 306) and became active members in the Club, would not preclude said Insurance Companies from being mutual companies, if they otherwise operated on the mutual plan. However, whether actually and strictly mutual companies for exemption purposes or not, it could make no difference for the purpose of obtaining the special deductions allowed under the sections of the Acts and by the articles of the Regulations here involved. Article 1014 of Regulations 74 and corresponding articles in all other Income Tax Regulations granted, and still grant, said special deductions to stock casualty and stock fire insurance companies operated upon the mutual plan by permitting such companies operated on the mutual plan to the extent of paying dividends to certain classes of policyholders to make a return on the same basis as a mutual company. The Keystone Companies paid dividends or returned premium deposits to all policyholders and all policyholders received the same rate of refund. (R. 6, 7, 15).

Therefore, the Baltimore Equitable Society case is no authority whatever for denying the deduction in question to the within Petitioners.

Analysis of the Koshland Case

In citing the case of *Koshland* v. *Helvering,* 298 U. S. 411, to support his position that the within Petitioners were not entitled, under the provisions of Article 1014, Regulations 74, to the deduction for "premium deposits retained", Judge Goodrich quoted from Mr. Justice Roberts' Opinion in the said case as follows:

> "When the Act uses ambiguous terms, or is of doubtfull construction, a clarifying regulation or one indicat-

> ing the method of its application to specific cases not only is permissible but is to be given great weight by the Courts. And the same principle governs where the statute merely expresses a general rule and invests the Secretary of the Treasury with authority to promulgate regulations appropriate to its enforcement. But where, as in this case, the provisions of the Act are unambiguous, and its directions specific, there is no power to amend it by regulation".

But Mr. Justice Roberts had earlier in his Opinion prefaced the language quoted by Judge Goodrich by the following statement:

> "* * * * * * * * * * *
>
> We give great weight to an administrative interpretation long and consistently followed, particularly when Congress presumably with that construction in mind, has reenacted the statute without change. The question here, however, is not merely of our adopting the administrative construction but whether it should be adopted if in effect it converts an income tax into a capital levy.
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> * * * * * * * * *".

No similar reason exists in the present case for disregarding the "reenactment rule". As a matter of fact, as has been shown above, Congress reenacted the particular section in question as it had theretofore been in force for a long period of time and has refused to adopt any change therein as recommended by the Treasury at the time of the passage of the 1932 Act. This definitely established Congressional approval of Article 1014, Regulations 74, promulgated thereunder. The conclusion reached by the Circuit Court of Appeals in its Opinion is in direct conflict with the cases of *Commissioner* v. *Oregon Mutual Ins. Co.*, 311 U. S. 267; *Reynolds Tobacco Co.* v. *Helvering*, 306 U. S. 110; *Provost* v. *U. S.*, 269 U. S. 443; *Smietanka* v. *First Trust &*

Savings Bank, 257 U. S. 602; *U. S.* v. *G. Galk & Bros.,* 204 U. S. 143.

The statement of this Court with respect to the "reenactment rule" in its Opinion in the Reynolds Tobacco Co. case, supra, applies with equal force in the present case. That statement was as follows:

> "The administrative construction embodied in the regulation has, since at least 1920, been uniform with respect to each of the revenue acts from that of 1913 to that of 1932, as evidenced by Treasury rulings and regulations and decisions of the Board of Tax Appeals. In the meantime successive revenue acts have reenacted, without alteration, the definition of gross income as it stood in the Acts of 1931, 1916 and 1918. Under the established rule Congress must be taken to have approved the administrative construction and thereby to have given it the force of law."

In the *Textile Mills Security Corporation* v. *Commissioner,* No. 34, October Term, 1941, decided December 8, 1941, the "reenactment rule" was again upheld, this time with respect to regulations interpreting the phrase "ordinary and necessary expenses". In this connection, Mr. Justice Douglas said:

> "* * * * * * The words 'ordinary and necessary' are not so clear and unambiguous in their meaning and application as to leave no room for an interpretative regulation. * * * * *"

So with respect to the phrase "mutual insurance companies", that term is not so clear and unambiguous in its meaning for Federal Tax purposes as to leave no room for an interpretative regulation. Article 1014, Regulations 74, was such a regulation and it indicated the method of application to specific cases mentioned in the said article. Congress approved this interpretation and these applications by reenacting into ten (10) consecutive revenue acts

from 1918 to 1941, the section of the statute in question in identical words and the same regulation has been promulgated under each revenue act. Congress did this even after the Treasury Department had requested a change in 1932, as described above.

Judge Goodrich's Opinion in the Circuit Court of Appeals holds that the word "mutual" as describing insurance companies in connection with Federal Tax matters, is not ambiguous as a matter of law. As to the application of the "reenactment rule" under any circumstances other than one of ambiguity as a matter of law, he says nothing. Thus he confines the "reenactment rule" strictly to instances of ambiguity. However, his quotation from the Opinion of Mr. Justice Roberts in the Koshland case states definitely to the contrary.

So far as a "mutual" is concerned, which is taxable under Section 208 (c) (3) of the Revenue Act of 1928 and the corresponding sections of prior and subsequent revenue acts, the article in the regulations, which has been promulgated under the various Acts, standing unchanged for twenty (20) years and with consistent and consecutive reenactment of the statute for a like period, has removed all degree of ambiguity by declaring that "mutual" for taxation purposes meant relative to *operation,* as distinct from *control.*

This is a case of first instance and an important question of Federal law which should be settled by this Court

Section 208 (c) (3) as contained in the Revenue Act of 1928 has been identical with the corresponding section in all revenue acts from that of 1918 down to date. Article 1014, Regulations 74, as promulgated under the 1928 Act has been substantially the same under every revenue act, and insofar as the particular part of the regulation which is here involved is concerned, it has been likewise identical.

Under such conditions, after continual reenactment in

ten (10) different revenue acts and identical regulations under each Act, the validity of the regulation is challenged by the Third Circuit, despite the fact that the Treasury Department did not do so either before the Board or that Court.

Judge Goodrich in his Opinion has misapplied the case of Koshland v. Helvering, supra. He reached a conclusion in conflict with many other applicable decisions of this Court;[1] and has thereby not given proper effect to the said applicable decisions. The anomaly of the decision of the Circuit Court of Appeals is conclusively evidenced by the fact that the Commissioner, the Board of Tax Appeals and the Third Circuit Court have all allowed the deduction for "premium deposits returned to policyholders", but all have disallowed the deduction for "premium deposits retained to pay losses and expenses".

The Commissioner disallowed the second deduction without any reason. The Board of Tax Appeals first disallowed it by applying a Treasury Decision which had been revoked as of the date of its issue, and later, upon rehearing, disallowed it on evidentiary grounds. The Circuit Court of Appeals for the Third Circuit desregarded the decision of the Board of Tax Appeals entirely and disallowed the said second deduction by holding that Article 1014, Regulations 74 was invalid with respect to said second deduction, and that the "Reenactment Rule" did not apply despite the attendant facts and circumstances.

A company that qualifies for one deduction necessarily qualifies for the other, for the irrefutable reason that both deductions are allowed by the same section of the statute and by the same regulation interpreting the said section of the said statute. Both deductions are allowed in accord-

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[1]Koshland v. Helvering, 298 U. S. 441
Commissioner v. Oregon Mutual Life Ins. Co., 311 U. S. 267
Reynolds Tobacco Co. v. Helvering, 306 U. S. 110
Provost v. U. S., 267 U. S. 443
Pink, Supt. v. AAA Highway Express, etc., 62 Sup. Ct. Rep. 241 (decided Dec. 8, 1941)

ance with the said regulation to stock companies operated upon the mutual plan.

The Petitioners were entitled to and were allowed the first deduction under the terms of the regulation as a stock company operated upon the mutual plan. They were, therefore, entitled to the second deduction. The rejectment of the "Reenactment Rule" for the purpose of disallowing the second deduction has now left the meaning of this statute in such a confused and uncertain condition as to make an authoritative construction of this Court most necessary.

We respectfully submit that the Certiorari should be granted.

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